

## **Employer Status Determination**

### **American Track Systems, Inc.**

This is the decision of the Railroad Retirement Board regarding the status of American Track Systems, Inc. (ATS) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The following information was provided by Mr. Thomas J. Morgan, of Mouldsdale, Morgan & Walker, an association of Commercial Finance Specialists, and Vice-President, Finance, of ATS, on behalf of ATS.

ATS was incorporated in 1967 and began operations in 1988. It is located in Shrewsbury, Pennsylvania. ATS sells rail components (such as turnouts, crossovers, rail clamps, rail fasteners, etc.). Until recently it had nine employees and the rail components were manufactured by subcontractors and sold to commuter rail lines. ATS is in the process of purchasing Newton Rail Mill, in Newton, Kansas, from The Atchison, Topeka and Santa Fe Railway Company. The Newton Rail Mill facility has 49 employees and produces rail components, so that when the purchase is completed ATS will have a total of 58 employees and will itself manufacture the rail components which it sells. The individuals working at Newton Rail Mill are currently subject to the Railroad Retirement and Railroad Unemployment Insurance Acts as employees of The Atchison, Topeka and Santa Fe Railway Company, a rail carrier employer under the Acts.

ATS is a privately owned company; all of the stock is held by Mr. Hans von Lange, who is the chief executive officer of ATS and constitutes the board of directors. It is not owned or controlled by or affiliated with any railroad.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with one or more employers as defined in paragraph (i) of this subdivision and which operates any equipment or facility or performs any service (other than trucking service, casual service, and the casual operation of equipment and facilities) in connection with the transportation of passengers or property by railroad \* \* \*.

Section 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax

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Act (RRTA) (26 U.S.C. § 3231).

ATS clearly is not a carrier by rail. Further, there is no evidence that ATS is under common ownership with any rail carrier or controlled by officers or directors who control a railroad. Therefore, it is the determination of the Board that ATS is not a covered employer under the Acts.

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Glen L. Bower

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V. M. Speakman, Jr.

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**TO:** Robert Bergeron  
Assistant to the Labor Member

**FROM:** General Counsel

**SUBJECT:** Employer Status Determination  
American Track Systems, Inc.

This is in response to your memorandum of April 6, 1993, regarding American Track Systems, Inc. (ATS).

You advise that ATS has completed its purchase of Newton Rail Mill from The Atchison, Topeka and Santa Fe Railway Company, a purchase that was in process during the preparation of a proposed employer status determination submitted by this office to the Board. The proposed decision would hold ATS to not be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts because it is not a carrier and is not under common control with a carrier.

As mentioned in the proposed decision, the employees working at the Newton Rail Mill facility were then subject to the Railroad Retirement and Railroad Unemployment Insurance Acts because they were employees of The Atchison, Topeka and Santa Fe Railway Company, a rail carrier employer under the Acts. Now that the purchase of Newton Rail Mill is complete, the employees working at the Newton Rail Mill facility are employees of ATS and, assuming that the Board adopts the proposed decision, would not be covered under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Catherine C. Cook

cc: Thomas Battista  
Counsel to the Chairman

Robert Perbohnner  
Counsel to the Management Member

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